IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

ORDER

Petitioner,

06-C-0407-C

v.

CHARLES H. MORRIS, President & CEO, Morris Multimedia Corporation, PETER JACKSON, Director of Sales and Corporate Communication, Morris Multimedia Corporation, MICHAEL SUNDERMAN, President & CEO, Morris Newspaper Corporation, JOHN D. INGEBRITSEN, Publisher, Boscobel Dial Newspaper, DAVID KRIER, Editor, Boscobel Dial Newspaper, WILLIAM S. HALE, Registered Agent, Morris Newspaper Group, SGT. GERARD O'ROURKE, President, Local 509 Boscobel Chapter, AFSCME, STEVEN WETTER, Mayor of Boscobel, MILT CASHMAN, Alderman, Boscobel Common Council, PETER HUIBREGSTE, Alderman, Boscobel Common Council, BARBARA BELL, Alderwoman, Boscobel Common Council, SARA STRONG, Alderwoman, Boscobel Common Council, GARY KJOS, Alderman, Boscobel Common Council, BOB SOMMERS, Alderman, Boscobel Common Council, BRIAN KENDALL, Alderman, Boscobel Common Council, M. BARE, Council Member, Boscobel Common Council, BOSCOBEL CITY COMMON COUNCIL, CITY OF BOSCOBEL, BOSCOBEL CORPORATE COUNSEL/CITY ATTORNEY, MORRIS NEWSPAPER CORPORATION OF WISCONSIN, MORRIS MULTIMEDIA, INC., AMERICAN FEDERATION OF

STATE, COUNTY AND MUNICIPAL EMPLOYEES
COUNCIL #509, LOCAL BOSCOBEL CHAPTER, SGT.
LEFTLER, MATTHEW FRANK, Secretary of the
Wisconsin Department of Corrections,

Respondents.

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This is a proposed civil action for declaratory, injunctive and monetary relief brought pursuant to 42 U.S.C. § 1983. Petitioner, who is presently confined at the Wisconsin Secure Program Facility in Boscobel, Wisconsin, contends that (1) respondents Peter Huibregste and Matthew Frank violated his First Amendment right to free speech by prohibiting him and other prisoners at the Wisconsin Secure Program Facility from receiving the Boscobel Dial newspaper; (2) the City of Boscobel ordinance that prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility violates his constitutional rights to free speech, equal protection and due process; (3) respondents Peter Huibregste and Gerard O'Rourke engaged in a conspiracy with members of the Boscobel city government and Morris Multimedia to violate his constitutional rights by passing an ordinance that prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility; and (4) respondents Morris Multimedia Incorporated, Morris Newspaper Corporation of Wisconsin, Charles H. Morris, Peter Jackson, Michael Sunderman, William S. Hale, John D. Ingebritsen and David Krier violated

his First Amendment right to free speech by refusing to sell him a subscription to the Boscobel Dial.

Petitioner asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is unable to prepay the full fees and costs of starting this lawsuit. Petitioner has made the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has had three or more lawsuits or appeals dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. This court will not dismiss petitioner's case on its own motion for lack of administrative exhaustion, but if respondents believe that petitioner has not exhausted the remedies available to him as required by § 1997e(a), they may allege his lack of exhaustion as an affirmative defense and argue it on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Massey v. Helman, 196 F.3d 727 (7th Cir. 1999); see also Perez v. Wisconsin Dept. of Corrections, 182 F.3d 532 (7th Cir. 1999).

Many of petitioner's claims will be dismissed at this stage. However, petitioner will be granted leave to proceed in forma pauperis on his claims that (1) respondents Peter Huibregste and Matthew Frank deprived him of his First Amendment right to free speech by instituting a policy at the Wisconsin Secure Program Facility that prohibits the distribution of the Boscobel Dial to prisoners and (2) respondent City of Boscobel's ordinance that prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility violates petitioner's First Amendment right to free speech. A policy limiting prisoners' access to reading material is constitutional so long as it is an unexaggerated response to legitimate penological interests. See, e.g., Turner v. Safely, 482 U.S. 78, 87 (1987). Considering only the facts alleged petitioner's complaint, and without speculating impermissibly, I cannot conclude whether the prison policy and the Boscobel ordinance meet Turner's requirements; I will grant petitioner leave to proceed in forma pauperis on these claims.

I draw the following allegations of fact from petitioner's complaint.

ALLEGATIONS OF FACT

A. Parties

Petitioner Titus Henderson is a prisoner at the Wisconsin Secure Program Facility in Boscobel, Wisconsin.

Morris Multimedia Incorporated is a privately held corporation based in Savannah, Georgia. Morris Newspaper Corporation of Wisconsin controls the distribution of the Boscobel Dial and newspapers in Gays Mills, Fennimore, Lancaster, Platteville and Cuba City, Wisconsin. Respondent Charles H. Morris is President and CEO of Morris Multimedia Incorporated. Respondent Peter Jackson is Director of Sales and Corporate Communication for Morris Multimedia Incorporated. Respondent Michael Sunderman is President and CEO of Morris Newspapers Corporation. Respondent William S. Hale is the registered agent for the Morris Newspaper Group.

Respondent John D. Ingebritsen is the publisher of the Boscobel Dial newspaper. Respondent David Krier is the editor of the Boscobel Dial newspaper.

At times relevant to this complaint, Sergeant Gerard O'Rourke was the president of Local 509, the Boscobel Chapter of the American Federation of State, County and Municipal Employees. Sergeant Leftler is the current president of Local 509 of the American Federation of State, County and Municipal Employees.

Peter Huibregste is a member of the Boscobel Common Council and is Deputy Warden of the Wisconsin Secure Program Facility.

Respondent Steven Wetter is the mayor of Boscobel, Wisconsin. The Boscobel Common Council is the legislative body for the City of Boscobel. The Boscobel Corporate Counsel/City Attorney drafts ordinances as directed by the Boscobel City Counsel.

Respondents Milt Cashman, Barbara Bell, Sara Strong, Gary Kjos, Bob Sommers, Brian Kendall and M. Bare are members of the Boscobel Common Council.

Respondent Matthew Frank is Secretary of the Wisconsin Department of Corrections.

B. Wisconsin Secure Program Facility Policy Regarding the Boscobel Dial

On January 11, 2003, petitioner was transferred to the Wisconsin Secure Program Facility. At that time, a prison policy developed and implemented by respondents Frank and Huibregste prohibited prisoners from receiving the Boscobel Dial, the local Boscobel newspaper. This policy had been in place at the Wisconsin Secure Program Facility since it opened in 1999. The policy was intended to prevent petitioner, and other prisoners at the Wisconsin Secure Program Facility, from "learning what was going on in the town of Boscobel."

On approximately April 30, 2003, Judge Nowakowski, a Dane County circuit court judge, issued a declaratory judgment and injunction, holding that the policy "banning" Wisconsin Secure Program Facility prisoner Bryce Garret from receiving the Boscobel Dial was unconstitutional. The order stated that "the defendants are restrained and enjoined from prohibiting the plaintiff from subscribing to or possessing the Boscobel Dial."

C. The Boscobel Common Council's Ordinance Regarding the Boscobel Dial

Correctional Officer Thode informed petitioner that, after Judge Nowakowski's decision was issued, respondents Huibregste and O'Rourke met in a state-funded brown trailer on state property to discuss "conspiring" with Boscobel Common Council members to protect correctional officers by passing an ordinance prohibiting the sale of the Boscobel Dial to petitioner and other Wisconsin Secure Program Facility prisoners.

On approximately May 20, 2003 the Boscobel Common Council passed an "Ordinance/Resolution," prohibiting the sale of the Boscobel Dial to petitioner and other Wisconsin Secure Program Facility prisoners. The City Attorney was told by the Common Council to draft the "Ordinance/Resolution."

Respondent O'Rourke worked with respondent Huibregste, who was a city alderman, to influence the passage of the ordinance by presenting negative and false information about Wisconsin Secure Program Facility prisoners. Respondents O'Rourke and Huibregste told the Common Council that if petitioner and other Wisconsin Secure Program Facility prisoners received the Boscobel Dial, they would have access to correctional officers' personal information and could give this information to their family or friends for the purpose of committing crimes against Wisconsin Secure Program Facility staff. Respondents O'Rourke and Huibregste told the Common Council that the Boscobel Dial should be denied to Wisconsin Secure Program Facility prisoners because they are the most dangerous prisoners within the Wisconsin Department of Corrections. Further, Respondents O'Rourke and

Huibregste told the Common Council that petitioner and other prisoners were "con-men" who wanted to gain access to the Boscobel Dial to "prey on citizens for false friendship, etc." Respondents Huibregste and O'Rourke were aware that their efforts would cause the Common Council to pass the ordinance and that the ordinance would undermine the effect of Judge Nowakowski's order.

Thereafter, the Boscobel City Library staff informed Wisconsin Secure Program Facility security staff that library staff would not provide service to any prisoners at the facility.

D. Petitioner's Efforts to Procure the Boscobel Dial

Respondents Ingebritsen and Krier implemented the following policy regarding distribution of the Boscobel Dial: "We do not condone, we have not solicited, and we will not support the sale of the Dial to inmates at the correctional facility. We want the community to know that we are not interested in selling the paper to [Wisconsin Secure Program Facility] prisoners and we see no value in doing so." In addition, Morris Multimedia, Inc. and Morris Newspaper Corporation of Wisconsin implemented a policy that "For the safety of the communities which it serves, Morris Newspaper Corporation of Wisconsin, with newspapers in Boscobel, Gays Mills, Fennimore, Lancaster, Platteville, and Cuba City, will not be selling subscriptions to inmates at the maximum security prison that

is in the newspaper readership area." Respondent Ingebritsen stated that the policy of the Boscobel Dial was to provide news of the community to people in their readership area.

On November 7, 2005, petitioner mailed a letter to respondent Ingebritsen at the Boscobel Dial, requesting a three-month subscription to the newspaper. Petitioner wanted to read about the death of his friend Lornell Evans, a prisoner at the Wisconsin Secure Program Facility, who had been denied medical care by prison staff. Prison staff "interfered" with this letter and returned it.

On January 23, 2006, petitioner asked Belinda Buckner to send twenty dollars in payment for a three-month subscription and a letter to respondent Ingebritsen requesting a subscription to the Boscobel Dial for petitioner. On March 16, 2006, respondent Ingebritsen returned the money order and letter to Buckner and declined petitioner's request for a subscription to the Boscobel Dial. Respondent Ingebritsen stated in his response "We are returning your money order–we cannot mail papers to our local prison. Sorry."

DISCUSSION

A. Improperly Named Respondents

As a preliminary matter, petitioner has named a large number of respondents to this action, some of whom must be dismissed from this case.

1. City of Boscobel officials

In his complaint, petitioner alleges that the Boscobel Common Council, individual Boscobel Common Council members, the Boscobel City Attorney and Boscobel Mayor are liable for passing an unconstitutional ordinance (and, additionally, for conspiring to do so). However, this type of claim is barred absolutely by the doctrine of legislative immunity. Bogan v. Scott-Harris, 523 U.S. 44, 54 (1998) (holding that state and local officials are absolutely immune under § 1983 when engaging in "legitimate legislative activity," including introducing, voting for or signing legislation). Because respondents Wetter, the Boscobel Common Council, Common Council members and the city attorney are entitled to absolute legislative immunity with respect to their roles in passing an ordinance, I will dismiss petitioner's claims against them. The proper respondent to petitioner's challenge to the constitutionality of the ordinance is the City of Boscobel itself.

2. American Federation of County, State and Municipal Employees, Local 509 and Sgt. Leftler

In his complaint, petitioner names as respondents the American Federation of County, State and Municipal Employees, Local 509 (AFSCME) and Sergeant Leftler, but he does not describe any actions taken by either respondent. Therefore, these respondents will be dismissed from the complaint. In any event, it is well established that liability under § 1983 must be based on a defendant's personal involvement in the constitutional violation, Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995); Del Raine v. Williford, 32 F.3d

1024, 1047 (7th Cir. 1994); Morales v. Cadena, 825 F.2d 1095, 1101 (7th Cir. 1987); Wolf-Lillie v. Sonquist, 699 F.2d 864, 869 (7th Cir. 1983), and petitioner has not alleged any involvement by these respondents in the decision to deny the Boscobel Dial to prisoners.

It is not probable that the whole of the AFSCME, or even the local chapter, was directly engaged in respondent O'Rourke's alleged efforts to curtail petitioner's rights. Petitioner repeatedly refers to respondent O'Rourke's actions as being those of the AFSCME. However, to state a claim under § 1983, petitioner would have to allege actions by the group itself, not the actions of one of its members or employees. Because he has not done this, petitioner claims against the AFSCME will be dismissed. In addition, petitioner names as a respondent Sergeant Leftler, the new president of AFSCME Local 509, but does not allege that Leftler personally took part in any of the events described in the complaint. Because petitioner does not allege any actions by Leftler from which liability under § 1983 could arise, petitioner's claims against him will also be dismissed.

3. Morris Multimedia Incorporated, its subsidiaries and employees

Petitioner includes in his complaint a claim that respondent Morris Multimedia and its employees, including respondents Ingebritsen and Krier (the publisher and editor of the Boscobel Dial, respectively) violated his First Amendment right to free speech and right to equal protection under the law by denying him a subscription to the Boscobel Dial.

To state a claim under 42 U.S.C. § 1983, petitioner must allege facts sufficient to

show that respondents, acting under color of state law, deprived him of a specific right or interest protected by federal law or the Constitution. Bublitz v. Cottey, 327 F.3d 485, 488 (7th Cir. 2003). In other words, it must appear from the complaint that respondents are state actors. Gayman v. Principal Financial Services, 311 F.3d 851, 852 (7th Cir. 2002) (citing Rendell-Baker v. Kohn, 457 U.S. 830, 838 (1982)). Petitioner describes respondent Morris Multimedia as a privately held corporation located in Savannah, Georgia. Petitioner does not specifically explain respondent Morris Multimedia's relationship with respondent Morris Newspaper Group, but it appears from his complaint that Morris Newspaper Group is a company related to Morris Multimedia that manages newspaper distribution in southwestern Wisconsin. Generally speaking, news outlets and publishers are not state actors for the purpose of § 1983. See, e.g., Chicago Joint Board v. Chicago Tribune Company, 435 F.2d 470, 474 (1970).

Petitioner's complaint suggests that respondents Morris Multimedia, Morris Newspaper Group or their employees took actions that were consistent with private, not state action; respondents either proactively developed a policy of refusing to distribute their newspapers to maximum security prisons or reacted to an ordinance that required them to do so. Thus, petitioner's claim that Morris Multimedia, Morris Newspaper Group and their employees violated his First Amendment rights will be dismissed because they are not state actors under § 1983.

Finally, petitioner's second claim against respondent Morris Multimedia, its subsidiaries and employees is that they were engaged in a conspiracy to pass an ordinance that unconstitutionally limited Wisconsin Secure Program Facility prisoners' access to the Boscobel Dial. However, petitioner's description of the facts surrounding the passage of the ordinance contains no mention of respondent Morris Multimedia or its representatives. Instead, he describes respondents O'Rourke and Huibregste's lobbying and planning efforts and the Boscobel Common Council's passage of the ordinance. He goes on to describe respondents Ingebritsen and Krier's subsequent refusal to distribute the newspaper to prisoners at the Wisconsin Secure Program Facility. However, following the dictates of an ordinance is not unconstitutional behavior, even if the ordinance itself is unconstitutional. Because petitioner has not alleged facts from which it can be inferred that respondents Morris Multimedia, its subsidiaries or employees were personally involved in any unconstitutional deprivation of petitioner's constitutional rights, his claims against them will be dismissed.

B. Wisconsin Secure Program Facility's Direct Denial of the Boscobel Dial to Prisoners

I understand petitioner to allege that his First Amendment rights were violated when prison officials at the Wisconsin Secure Program Facility denied him copies of the Boscobel Dial from the time that he arrived at the facility until the Boscobel Common Council passed

an ordinance prohibiting the sale of the Boscobel Dial to prisoners at the facility. Prison actions that affect an inmate's receipt of non-legal mail must be "reasonably related to legitimate penological interests." Thornburgh v. Abbott, 490 U.S. 401, 409 (1989). In Turner v. Safely, 482 U.S. 78 (1987), the Supreme Court set out four factors to be used in determining the reasonableness of prison regulations. Those factors are: 1) the existence of a "valid, rational connection" between the regulation and a legitimate, neutral government interest; 2) the existence of alternative methods for the inmate to exercise his constitutional right; 3) the effect the inmate's assertion of that right will have on the operation of the prison; and 4) the absence of an alternative method to satisfy the government's legitimate interest. Id. at 89-90. Thus, a prison policy limiting prisoners' access to reading material will be held constitutional so long as it is an unexaggerated response to legitimate penological interests. Beard v. Banks, 126 S. Ct. 2572, 2578 (2006) (citing Turner, 482 U.S. at 87).

At this stage in the proceedings, the prison's reasons for denying petitioner access to the Boscobel Dial are not clear, and I will not speculate about possible reasons. See, e.g., Lindell v. Frank, 377 F.3d 655, 657-58 (7th Cir. 2005). Instead, petitioner will be granted leave to proceed on this claim.

C. Constitutionality of the Boscobel Common Council's Ordinance

Petitioner contends that the ordinance passed by the Boscobel Common Council

violated First Amendment and Fourteenth Amendment equal protection and substantive due process requirements of the United States Constitution. Namely, he contends that the ordinance violated. Petitioner has not included the specific language of the ordinance with his complaint. Instead, he describes its effect, which he contends prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility. It is difficult to evaluate the constitutional merits of an ordinance absent its specific language. However, at screening, I must construe petitioner's complaint generously. Therefore, for the purposes of this order, I will assume the ordinance means and does what he describes.

1. Equal protection

Petitioner contends that the Boscobel Common Council's ordinance violates his right to equal protection of the law because it treats prisoners at the Wisconsin Secure Program Facility differently from other individuals who live within Boscobel's municipal boundaries. The equal protection clause of the Fourteenth Amendment protects "every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." Smith v. City of Chicago, 457 F.3d 643, 650 (7th Cir. 2006) (quoting Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (internal citations omitted). In situations in which no fundamental right or suspect classification is implicated, equal protection claims are reviewed by courts using a rational basis standard of review. Id.; Discovery House, Inc.

v. Consolidated City of Indianapolis, 319 F.3d 277, 282 (7th Cir. 2003).

Although freedom of speech is a fundamental right sufficient to raise the level of judicial scrutiny, petitioner has raised this claim directly and I have considered it below. Despite petitioner's contentions, "prisoners at [Wisconsin Secure Program Facility]" do not constitute a suspect classification for the purpose of equal protection analysis. Accordingly, I will consider petitioner's claim using the rational basis standard.

Using the rational basis standard, a court should "uphold the legislative enactment (or classification) so long as it bears a rational relation to some legitimate end." Eby-Brown Company, LLC v. Wisconsin Department of Trade and Consumer Protection, 295 F.3d 749, 754 (7th Cir. 2002). A court should not strike down an action by a legislative body simply because it "'may be unwise, improvident, or out of harmony with a particular school of thought.'" Id. (quoting Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 488 (1955)). Instead, if the court can reasonably conceive of any set of facts that would justify the action, it should be upheld. Racine Charter One, Inc. v. Racine Unified School District, 424 F.3d 677, 685 (7th Cir. 2005). The enacting body need not have articulated the rational basis in the course of its decision making process; it is sufficient that the court can surmise that the body had a reasonable purpose or policy. Id.

Petitioner has pleaded himself out of court on his equal protection claim. See, e.g., Jackson v. Marion County, 66 F.3d 151, 153 (7th Cir. 1995). In petitioner's complaint, he

provided the court with not only a theoretical rational basis for the common council's action, but described information that he alleges was relied upon by the common council members when they passed the ordinance. In his complaint, petitioner stated that respondent O'Rourke told the Boscobel Common Council that if petitioner and other Wisconsin Secure Program Facility prisoners received the Boscobel Dial, they would have access to correctional officers' personal information and could give this information to their family or friends for the purpose of committing crimes against Wisconsin Secure Program Facility staff. Additionally, respondent O'Rourke allegedly told the common council that petitioner, and other prisoners, were con-men who wanted to gain access to the Boscobel Dial to "prey on citizens for false friendship, etc." Although petitioner contends that these are false statements, they certainly could have raised public safety concerns. The common council may have considered these concerns; whether it did or not, they are more than sufficient to establish a rational basis for the council's decision to pass the ordinance. Thus, petitioner's request for leave to proceed will be denied with respect to his claim that the Boscobel ordinance violated his right to equal protection under the law.

2. Due process

In another attack on the ordinance, petitioner contends that it violates his right to substantive due process. Substantive due process is implicated when the government exercises power without reasonable justification, and is most often described as an abuse of

government power that "shocks the conscience." Tun v. Whitticker, 398 F.3d 899, 900 (7th Cir. 2005).

Because it is difficult to place responsible limits on the concept of substantive due process, the Supreme Court has directed lower courts to analyze claims under more specifically applicable constitutional provisions before addressing a substantive due process challenge. Albright v. Oliver, 510 U.S. 266 (1994) ("Where a particular amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.'") (citing Graham v. Connor, 490 U.S. 386 (1989)); Koutnik v. Brown, 456 F.3d 777, 781 (7th Cir. 2006). In this case, petitioner alleges that the actions of respondents violated his First Amendment rights to free speech. Therefore, it is unnecessary to analyze his claim under a substantive due process theory as well. Petitioner's substantive due process claim will be dismissed.

3. First Amendment

Finally, petitioner alleges that the ordinance passed by the Boscobel Common Council violates his First Amendment right to free speech. Although petitioner has not stated precisely what the ordinance says, he has alleged that its effect is to prohibit the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility. A prohibition on the possession of a newspaper may infringe upon petitioner's First Amendment rights.

See, e.g., Griswold v. Connecticut, 381 U.S. 479 (1965) ("The right of freedom of speech and press includes not only the right to utter or print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought . . . ."). As the Court of Appeals for the Seventh Circuit has observed, "Freedom of speech is not merely freedom to speak; it is also freedom to read." King v. Federal Bureau of Prisons, 415 F.3d 634, 638 (7th Cir. 2005) (citing Stanley v. Georgia, 394 U.S. 557 (1969); Lamont v. Postmaster General, 381 U.S. 301, 306-07 (1965); Conant v. Walters, 309 F.3d 629, 643 (9th Cir. 2002)).

The standard for determining whether a restriction on a prisoner's First Amendment right to free speech is more searching than the deferential rational basis standard used to review equal protection and due process claims. See, e.g., Amatel v. Reno, 156 F.3d 192, 196 (D.C. Cir. 1998); Turner, 482 U.S. at 89-91. Under Turner, a court must consider whether the restriction is reasonably related to legitimate penological interests. Id. at 89-91. When reviewing a prisoner complaint for screening purposes, it is not appropriate for this court to envision possible justifications regarding these legitimate penological interests. See, e.g., Lindell v. Frank, 377 F.3d 655, 658 (2004). From the limited facts alleged in petitioner's complaint, I cannot determine whether the Boscobel ordinance constitutes an impermissible restriction on petitioner's First Amendment rights or whether it is reasonably related to a legitimate penological interest. Because there may be some set of facts under

which petitioner could prevail on this claim, I will grant him leave to proceed.

D. Conspiracy to Pass an Ordinance Prohibiting the Sale of the Boscobel Dial to Prisoners

Petitioner contends that respondents Huibregste, O'Rourke, members of the Boscobel Common Council, the Mayor of Boscobel and Morris Multimedia and its employees worked together in a conspiracy to deprive Wisconsin Secure Program Facility prisoners access to the Boscobel Dial. Specifically, I understand petitioner to allege that respondents conspired to pass the Boscobel ordinance, which prohibited distribution of the Boscobel Dial to Wisconsin Secure Program Facility prisoners. Petitioner contends that this was done with the intent of subverting the state court order that prevented prison officials from achieving this result directly. Petitioner advances theories of conspiracy under both 42 U.S.C. § 1985(3) and § 1983.

To state a claim under § 1985(3), it must be possible to infer from petitioner's allegations that respondents' actions were motivated by racial, or "perhaps otherwise class-based," discriminatory animus. Griffin v. Breckenridge, 403 U.S. 88, 102 (1971); Green v. Benden, 281 F.3d 661, 665 (7th Cir. 2002). As noted above, petitioner alleges that the ordinance discriminates against "prisoners at the Wisconsin Secure Program Facility." This is not of the very limited type of class-based discrimination that falls within the

protection of § 1985(3). See, e.g., Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993) (cautioning against expanding definition of "class-based discriminatory animus" in manner that would convert § 1985(3) into "general federal tort law"). By alleging facts that demonstrate that the ordinance is not targeted toward a protected class, petitioner has pleaded himself out of court on this conspiracy claim. See American United Logistics, Inc. v. Catellus Development Corporation, 319 F.3d 921, 928 (7th Cir. 2003).

Petitioner's other conspiracy theory falls under § 1983, which also authorizes suits claiming civil conspiracy. See, e.g., Lewis v. Washington, 300 F.3d 829, 831 (7th Cir. 2002). To plead a conspiracy under § 1983, petitioner is required to identify the parties involved and explain the general purpose and the approximate date on which the parties conspired in order to provide the respondents with notice of what they are accused. Hoskins v. Poelstra, 320 F.3d 761, 764 (7th Cir. 2002); Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). Petitioner's complaint satisfies this requirement.

However, the facts alleged by petitioner do not support his theory of conspiracy; rather, they describe actions of politically interested individuals employing the tools of government to achieve a political end. Petitioner contends that respondents Huibregste and O'Rourke met in private to discuss a plan to lobby the Boscobel Common Council to pass an ordinance that they supported. They executed this plan successfully; the Boscobel Common Council passed the ordinance, which was approved by the mayor and drafted by

the city attorney. Petitioner contends that the information used to lobby the common council was inaccurate and that the end result was the council's passage of an unconstitutional ordinance. This is not evidence of conspiratorial, or even particularly unusual, activity. It is common for interested parties to have strong, vested interests in encouraging legislative bodies to reach results that they prefer. No one would suppose that an individual who lobbied the state legislature to pass a law that was later found unconstitutional would be liable for engaging in conspiracy to violate the constitutional rights of those affected by the new law. Simply put, the conduct petitioner complains of may have been an effort by respondents Huibregste and O'Rourke to subvert the intent of a state court order, but it was not conspiratorial. Therefore, petitioner does not state a valid claim under § 1983. Petitioner's conspiracy claims against respondents Huibregste and O'Rourke will be dismissed.

ORDER

IT IS ORDERED that

1. Petitioner is GRANTED leave to proceed in forma pauperis on his claims that (1) respondents Peter Huibregste and Matthew Frank deprived him of his First Amendment right to free speech by instituting a policy at the Wisconsin Secure Program Facility that prohibits the distribution of the Boscobel Dial to prisoners and (2) respondent City of

Boscobel's ordinance prohibiting the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility violates petitioner's First Amendment right to free speech.

2. Petitioner is DENIED leave to proceed in forma pauperis on his claims that

(1) The City of Boscobel ordinance that prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility violates his constitutional rights to equal protection and substantive due process,

(2) Respondents Peter Huibregste and Gerard O'Rourke engaged in a conspiracy with members of the Boscobel city government and Morris Multimedia to violate his constitutional rights by passing an ordinance that prohibits the distribution of the Boscobel Dial to prisoners at the Wisconsin Secure Program Facility, and

(3) Respondents Morris Multimedia Incorporated, Morris Newspaper Corporation of Wisconsin, Charles H. Morris, Peter Jackson, Michael Sunderman, William S. Hale, John D. Ingebritsen and David Krier violated petitioner's First Amendment right to free speech by refusing to sell him a subscription to the Boscobel Dial.

3. Respondents Steven Wetter, the Boscobel Corporate Counsel/City Attorney, Milt Cashman, Barbara Bell, Sara Strong, Gary Kjos, Bob Sommers, Brian Kendall, M. Bare,

Morris Multimedia Incorporated, Morris Newspaper Corporation of Wisconsin, Charles H. Morris, Peter Jackson, Michael Sunderman, William S. Hale, John D. Ingebritsen, David Krier, American Federation of State, County and Municipal Employees, Local 509, Sgt. Leftler and Gerard O'Rourke are DISMISSED from this case.

4. For the remainder of this lawsuit, petitioner must send respondents a copy of every paper or document that he files with the court. Once petitioner has learned what lawyers will be representing respondents, he should serve the lawyers directly rather than respondents. The court will disregard any documents submitted by petitioner unless petitioner shows on the court's copy that he has sent a copy to respondents or to respondents' attorneys.

5. Petitioner should keep a copy of all documents for his own files. If petitioner does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

6. The unpaid balance of petitioner's filing fee is $346.99; petitioner is obligated to pay this amount in monthly installments, as described in 28 U.S.C. § 1915(b)(2).

7. Pursuant to an informal service agreement between the Attorney General and this court, copies of petitioner's complaint and this order are being sent today to the Attorney General for service on the state respondents. No later than November 29, 2006, petitioner will have to complete and return the enclosed United States Marshals Service form so that

a copy of his complaint can be served by the United States Marshal on respondent City of Boscobel. For petitioner's information, the form should be addressed either to the "Chief Executive Officer" (the mayor) of the City of Boscobel, FRCP 4(j)(2), or the city manager or clerk. Wis. Stat. § 801.11(4). If, by November 29, 2006, petitioner fails to return the Marshals Service form, I will dismiss the City of Boscobel for petitioner's failure to prosecute.

Entered this 14th day of November, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge